

MARK R. BUCKLIN
STEVEN L. THORSRUD
MICHAEL C. WALTER
ANDREW G. COOLEY
STEWART A. ESTES
JAYNE L. FREEMAN
RICHARD B. JOLLEY
SHANNON M. RAGONESI
KIMBERLY J. WALDBAUM



KEATING, BUCKLIN & MCCORMACK, INC., P.S.

ATTORNEYS AT LAW
800 Fifth Avenue, Suite 4141
Seattle, Washington 98104-3175
Phone: 206.623.8861
Fax: 206.223.9423
www.kbmlawyers.com
mwalter@kbmlawyers.com

JEREMY W. CULUMBER
AMANDA G. BUTLER
BRIAN C. AUGENTHALER
RUTH NIELSEN
DEREK C. CHEN

OF COUNSEL:
BRENDA L. BANNON

ROBERT C. KEATING (1915-2001)

March 1, 2016

VIA MESSENGER

Records Custodian
U.S. Environmental Protection Agency, Region 10
1200 – 6th Ave.
Seattle, WA 98101

RE: *Snoqualmie Indian Tribe, et al. v. City of Snoqualmie, et al.*
Case No. 2:15-cv-01936
Subpoena Duces Tecum – request for documents held by the EPA

To Records Custodian or other representative:

I am one of the attorneys for the Defendants in the above entitled lawsuit currently pending in U.S. District Court in Seattle. The Environmental Protection Agency is in possession of records relating to the Snoqualmie Indian Tribe and/or the Snoqualmie Casino and/or other Indian Tribes in the State and which pertain to the above-referenced lawsuit. Enclosed please find a Subpoena Duces Tecum demanding production of any and all responsive documents.

The Subpoena Duces Tecum requests production of the referenced records on or before Monday, March 14, 2016, at my office, the law offices of Keating, Bucklin & McCormack, Inc. P.S. in Seattle. If you wish to avoid traveling to my office, you can instead make a true, accurate and complete copy the documents that are responsive to the Subpoena Duces Tecum and mail (or deliver) them to my office by March 14. If you elect to comply with the Subpoena Duces Tecum in this manner, you will also need to complete and sign the enclosed declaration form and return the original to our office along with all responsive records.

I recognize that copying the requested documents may create an expense to you; accordingly, I will be happy to reimburse you a reasonable amount for the actual costs of copying the records.

Records Custodian
The Environmental Protection Agency
March 1, 2016
Page 2

Please feel free to call me if you have any questions about this matter. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael C. Walter", with a stylized flourish at the end.

Michael C. Walter

MCW/lw

Enclosures: (1) Subpoena Duces Tecum (and Exhibit A)
(2) Declaration form

cc: Chris Bellovary (Office or Regional Counsel for EPA) (via U.S. mail)
Peter Contreras (EPA employee) (via U.S. mail)
Derek Schruhl (EPA employee) (via U.S. mail)
Bob C. Sterbank (co-counsel for Defendants)
Rob Roy Smith (attorney for Plaintiffs)
Rachel Saimons (attorney for Plaintiffs)
Claire Newman (attorney for Plaintiffs)

UNITED STATES DISTRICT COURT

for the

Western District of Washington

SNOQUALMIE INDIAN TRIBE, et al.

Plaintiff

v.

CITY OF SNOQUALMIE, et al.

Defendant

Civil Action No. 2:15-cv-01936-JLR

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Records Custodian, U.S. Environmental Protection Agency, Region 10, 1200 6th Ave., Seattle, WA 98101

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: SEE ATTACHED EXHIBIT A

Place: Keating, Bucklin & McCormack, Inc., P.S.
800 Fifth Avenue, Suite 4141
Seattle, WA 98104-3175

Date and Time:

03/14/2016 4:30 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 03/01/2016

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR


Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Defendants

, who issues or requests this subpoena, are:

Michael C. Walter, WSBA #15044, Keating, Bucklin & McCormack, Inc., P.S., 800 Fifth Ave., Suite 4141, Seattle, WA 98104-3175; (206) 623-8861; mwalter@kbmlawyers.com

Civil Action No. 2:15-cv-01936-JLR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* U.S. Environmental Protection Agency
was received by me on *(date)* 03/01/2016.

☒ I served the subpoena by delivering a copy to the named person as follows: Records Custodian,
Records Custodian, U.S. Environmental Protection Agency
via Legal Messenger and First Class U.S. Mail on *(date)* 03/01/2016; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 03/01/2016



Server's signature

LaHoma Walker, Legal Assistant

Printed name and title

Keating, Bucklin & McCormack, Inc., P.S.
800 Fifth Ave., Suite 4141
Seattle, WA 98104
(206) 623-8861

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A

TO United States Environmental Protection Agency SUBPOENA DUCES TECUM

You are commanded to produce the following pursuant to the instructions on the attached subpoena duces tecum:

1. Any and all letters, memos, e-mails, text messages, documents or other forms of communication of any kind to or from the Snoqualmie Indian Tribe, the Snoqualmie Entertainment Authority and/or the Snoqualmie Casino, or any of its members, employees, attorneys, agents or representatives, in written or electronic form or in any other form or medium, pertaining to evaluation, analysis or review, or permitting or other authorization of wastewater treatment or sewerage treatment and/or disposal or discharge options or alternatives for the Snoqualmie Casino or other existing or proposed buildings or properties owned or operated (or proposed to be owned and/or operated) by the Snoqualmie Indian Tribe, the Snoqualmie Entertainment Authority and/or the Snoqualmie Casino.
2. Any and all letters, memos, e-mails, text messages, documents or other forms of communication of any kind to or from the Tulalip Indian Tribe, the Quil Ceda Village owned and operated by the Tulalip Indian Tribe, and/or any entity owned or controlled by the Tulalip Indian Tribe, or any of its members, employees, attorneys, agents or representatives, in written or electronic form or in any other form or medium, pertaining to evaluation, analysis or review, or permitting or other authorization of wastewater and/or sewage treatment and disposal utilizing a membrane bio reactor ("MBR") followed by surface water discharge, land surface infiltration, rapid bed infiltration and/or underground injection, regardless of whether said records, written or electronic form or in any other form or medium.
3. Any and all letters, memos, e-mails, text messages, documents or other forms of communication of any kind to or from the Skagit Indian Tribe, and/or any entity owned or controlled by the Skagit Indian Tribe, or any of its members, employees, attorneys, agents or representatives, in written or electronic form or in any other form or medium, pertaining to evaluation, analysis or review, or permitting or other authorization of wastewater and/or sewage treatment and disposal utilizing a membrane bio reactor ("MBR") followed by surface water discharge, land surface application, rapid bed infiltration, and/or underground injection, regardless of whether said records exist in written or electronic form or in any other form or medium.

4. Any and all letters, memos, e-mails, text messages, documents or other forms of communication of any kind to or from the Nisqually Indian Tribe, and/or any entity owned or controlled by the Nisqually Indian Tribe, or any of its members, employees, attorneys, agents or representatives, in written or electronic form or in any other form or medium, pertaining to evaluation, analysis or review, or permitting or other authorization of wastewater and/or sewage treatment and disposal utilizing a membrane bio reactor ("MBR") followed by surface water discharge, land surface application, rapid bed infiltration, and/or underground injection, regardless of whether said records exist in written or electronic form or in any other form or medium.

5. Any and all letters, memos, e-mails, text messages, documents or other forms of communication of any kind to or from the Squaxin Island Indian Tribe, and/or any entity owned or controlled by the Squaxin Island Tribe, or any of its members, employees, attorneys, agents or representatives, in written or electronic form or in any other form or medium, pertaining to evaluation, analysis or review, or permitting or other authorization of wastewater and/or sewage treatment and disposal utilizing a membrane bio reactor ("MBR") followed by surface water discharge, land surface application, rapid bed infiltration, and/or underground injection, regardless of whether said records exist in written or electronic form or in any other form or medium.

6. Any and all letters, memos, e-mails, text messages, documents or other forms of communication of any kind to or from the Cowlitz Indian Tribe, and/or any entity owned or controlled by the Cowlitz Indian Tribe, or any of its members, employees, attorneys, agents or representatives, in written or electronic form or in any other form or medium, pertaining to evaluation, analysis or review, or permitting or other authorization of wastewater and/or sewage treatment and disposal utilizing a membrane bio reactor ("MBR") followed by surface water discharge land application and rapid bed infiltration, and/or underground injection, regardless of whether said records exist in written or electronic form or in any other form or medium.

7. Any and all letters, memos, e-mails, text messages, documents or other forms of communication of any kind to or from the Grand Ronde Indian Tribe, and/or any entity owned or controlled by the Grand Ronde Indian Tribe, or any of its members, employees, attorneys, agents or representatives, in written or electronic form or in any other form or medium, pertaining to evaluation, analysis or review, or permitting or other authorization of wastewater and/or sewage treatment and disposal utilizing a membrane bio reactor ("MBR") followed by surface water discharge land application and rapid bed infiltration, and/or underground injection, regardless of whether said records exist in written or electronic form or in any other form or medium.

8. Any and all files, documents, reports, checklists, environmental assessments, analyses, evaluations or other documents prepared pursuant to or reflecting review by the United States EPA or any other federal agency pursuant to the National Environmental Policy Act or any implementing regulations, rule or policy, of any existing or proposed MBR wastewater and/or sewage treatment and disposal facility, or any wastewater discharge and/or disposal, land

application, surface infiltration and/or underground injection of reclaimed or other water or liquid resulting from wastewater treatment via MBR; by the Nisqually Indian Tribe, Skagit Indian Tribe, Tulalip Indian Tribe, Grand Ronde Indian Tribe, Cowlitz Indian Tribe, or Squaxin Island Indian Tribe (or any of them), or any entity or organization owned and/or controlled by any of said Indian Tribes, whether such records exist in written or electronic form or in any other form or medium.

9. Any and all permits, authorizations by rule, approvals, or other documents reflecting decisions by the United States EPA to allow, approve, authorize, permit, and/or facilitate wastewater and/or sewage treatment and disposal via a MBR; or discharge and/or disposal, land application, surface infiltration and/or underground injection of reclaimed or other water or liquid resulting from wastewater treatment via MBR; by the Nisqually Indian Tribe, Skagit Indian Tribe, Tulalip Indian Tribe, Grand Ronde Indian Tribe, Cowlitz Indian Tribe, or Squaxin Island Indian Tribe (or any of them), or any entity or organization owned and/or controlled by any of said Indian Tribes,, including any records in written or electronic form or in any other form or medium.

10. Any and all engineering reports, plans, designs, specifications, schematics, as-builts, and/or other documents or files disclosing the physical layout, configuration and other details of any MBR wastewater/sewage treatment system and any surface water discharge, land application, land surface infiltration or underground injection well(s) utilized by the Nisqually Indian Tribe, Skagit Indian Tribe, Tulalip Indian Tribe, Grand Ronde Indian Tribe, Cowlitz Indian Tribe, or Squaxin Island Indian Tribe (or any of them), or any entity or organization owned and/or controlled by any of said Indian Tribes, whether such records exist in written or electronic form or in any other form or medium.

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**SNOQUALMIE INDIAN TRIBE, a federally-recognized Indian tribe as *parens patriae*, by
and through the SNOQUALMIE ENTERTAINMENT AUTHORITY d/b/a
SNOQUALMIE CASINO,**

Plaintiffs,

v.

**CITY OF SNOQUALMIE; MATTHEW LARSON, in his official capacity as City Mayor;
ROBERT JEANS, in his official capacity as City Council Member; CHELLEY
PATTERSON, in her official capacity as City Council Member; BRYAN HOLLOWAY, in
his official capacity as City Council Member; BRAD TOFT, in his official capacity as City
Council Member; HEATHER MUNDEN, in her official capacity as City Council Member;
CHARLES PETERSON, in his official capacity as City Council Member; KATHI
PREWITT, in her official capacity as City Council Member and Mayor Pro Tem;
ROBERT LARSON, in his official capacity as City Administrator; and DANIEL
MARCINKO, in his official capacity as City Public Works Director,**

Defendants.

DECLARATION OF RECORDS CUSTODIAN

The Records Custodian for the U.S. Environmental Protection Agency answers the following questions regarding the Subpoena Duces Tecum issued to it by the Defendants in the above-referenced lawsuit:

1. What is your name and work address?
2. State the capacity in which you are employed by the above-named organization and state whether you are one of the authorized custodian of records or the records librarian.
3. Are the attached documents true, accurate, complete and unaltered records of the above-named organization in response to the Subpoena Duces Tecum issued to it by the City of Snoqualmie?

If not, identify specifically what records have been omitted from production.

How many pages are in the file? _____

How many pages are you providing to us? _____

4. Were these records made, kept and maintained by the above-named person/entity in the regular course of business?

5. If photocopies have been made of the original records, were such copies made under your direction and control and are they true, accurate, complete and unaltered copies of such records?

Pursuant to RCW 9A.72.085, I hereby certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this _____ day of March, 2016, at _____, WA.

Authorized Custodian